Ga., 35; *Patin v. State,* 38 Neb., 862; *Brownlee v. Hewitt,* 1 Mo. App., 360. The case under discussion holding that prejudice during the absence of a judge must be shown in order to constitute error, is supported by a minority of authorities. *Baxter v. Ray,* 52 Iowa, 336. If counsel proceed with their arguments after the judge's departure, though prejudice be shown, no appeal will be allowed. *Oakley v. Aspinwall,* 3 N. Y., 547. Some States, also, adopt the view that if absence by the judge is not complained of at the time, a new trial will not be granted. *O'Shields v. State,* 81 Ga., 301; *Pritchett v. State,* 92 Ga., 301. The holding of the principal case, though probably not in accord with the present numerical weight of authority on this subject, is at least more in accord with common sense, and seems to lay down a better rule.

INTOXICATING LIQUORS—SALE WITHOUT LICENSE—BURDEN OF PROOF—SALT LAKE CITY V. ROBINSON, 125 PAC., 657 (UTAH).—*Held,* that the burden is on one charged with selling intoxicants without a license to show that he had a license to sell.

It is held in Kansas that where a defendant is prosecuted for selling intoxicating liquor without a license the burden of proving a want of license is upon the prosecution. *State v. Kuhuke,* 26 Kan., 405; *State v. Nye,* 32 Kan., 201. In Wisconsin the doctrine is that, in such prosecution, the State must produce some presumptive evidence that the defendant had no license before he can be called upon to prove the contrary. *Heplar v. State,* 58 Wis., 46; *Mehan v. State,* 7 Wis., 670. In two early cases the Supreme Court of Massachusetts held that the prosecution must prove that the accused had no license, and no presumption that he had none could arise from the act of selling. *Com. v. Livermore,* 2 Allen (Mass.), 292; *Com. v. Thurlow,* 24 Pick. (Mass.), 374. Thereupon the legislature passed an act that in all prosecutions for liquor selling the legal presumption should be that the defendant had not been licensed, thus reversing what had been held to be the Common Law rule in these two cases. This was held to be within the powers of the legislature. *Com. v. Kelly,* 10 Cush., 69. An early case in North Carolina also held that the allegation of the want of a license in a bill of indictment for selling spirituous liquor must be proved on the part of the State. *State v. Evans,* 5 Jones' Rep. (N. C.), 250. But the generally established rule is stated by the main case. *Com. v. Belou,* 115 Mass., 139; *Jefferson v. People,* 101 N. Y., 19; *Lucio v. State,* 35 Tex. Crim., 320. Of course, the word *burden,* as used in the main case, must be understood to mean merely the burden of proceeding; otherwise it would be requiring the accused to establish his innocence, which would be contrary to the notion of the Criminal Law which regards him as innocent until proved guilty.

MANDAMUS—OFFICERS SUBJECT TO MANDAMUS—GENERAL COUNCIL OF CITY.—CITY OF PEDUCAH V. BOARD OF EDUCATION OF CITY OF PEDUCAH, 145 S. W., 1 (KY.).—*Held,* that where it is proper for the general council to

apportion revenues, and include in their apportionment the amount to be applied to school purposes, as provided by statute, any attempt to defeat the legal demands of the board of education, either by insufficient apportionment or by an insufficient levy, may be prevented by *mandamus.*

Municipal legislative bodies, like the superior legislative bodies of the State government, in the performance of purely legislative functions, are exempt from coercion by mandamus. *Kennedy v. Washington,* 3 Cranch (C. C.), 595; *Young v. Carey,* 80 Ill. App., 601. But mandamus lies to compel the proper authorities to perform their ministerial duties. *People v. Raymond,* 186 Ill., 407; *Polk v. James,* 68 Ga., 128. Thus mandamus lies to compel a city council to distribute and pay over the moneys apportioned for school purposes; *Hon v. State,* 89 Ind., 249; *Plainfield Bd. of Education v. Sheridan,* 45 N. J. L., 276; *Brown v. Nash,* 1 Wyo., 85; and to appropriate a sum of money for the maintenance of a public board when a statute makes it their duty to do so. *State v. Shakespeare,* 41 La. Ann., 156; *Perkins v. Slack,* 86 Pa. St., 270. But where the authorities are vested with exclusive discretionary powers in the disbursement and distribution of school funds, or in appropriating money for school purposes mandamus does not lie to compel their discretion. *Newark v. Newark Bd. of Education,* 30 N. J. L., 374. So also the writ will not lie to compel an appropriation for school purposes unless the authorities having the power to make the requisition therefor do so in the proper manner and at the proper time. *Com. v. Pittsburg,* 209 Pa. St., 333.

MUNICIPAL CORPORATIONS—POWERS OF COUNCIL—RESOLUTION.—LEVY ET AL. V. CITY OF ELIZABETH, 80 ATL., 498 (N. J.).—*Held,* that a municipal charter conferring on the council power to "make, establish, publish and modify, amend or repeal ordinances, rules, regulations, and by-laws" for certain specified purposes, gives no power to the council to act in that regard by resolution, but only by ordinance.

Legislative and permanent acts regulating the affairs of a municipal corporation should be in the form of ordinances and not in the form of resolutions. *Cascaden v. Waterloo,* 106 Iowa, 673; *Central v. Sears,* 2 Colo., 588. A resolution is sufficient for the promulgation of ministerial acts. *Blanchard v. Bissell,* 11 Ohio St., 96. An ordinance may, however, be in the form of a resolution and will generally be valid if enacted with all the formalities which are required by law for the enactment of ordinances. *Sower v. Philadelphia,* 35 Pa. St., 231; *Alma v. Guaranty Savings Bank,* 19 U. S. App., 622. In such cases, however, it has been held that there must be an affirmative showing that the concomitant formalities of an ordinance, as regards its approval and subsequent publication, were observed to establish the validity of the resolution as an ordinance. *Wheeler v. City of Poplar Bluff,* 149 Mo., 36. But where the charter confers upon a city council power to regulate by ordinance, a like power to regulate by resolution is not to be implied, and such resolutions will be null and void.